

**371.410 Retainage that may be withheld -- Release of retainage -- Substantial completion.**

- (1) Notwithstanding any provision of the Kentucky Revised Statutes to the contrary, until fifty percent (50%) of the construction project has been completed in accordance with the contract, a contracting entity, contractor, or subcontractor may withhold no more than ten percent (10%) retainage from the amount of any undisputed payment due, and retainage held after fifty-one percent (51%) of the construction project has been completed shall not be more than five percent (5%) of the total contract amount.
- (2) Within thirty (30) days after substantial completion of a construction project, the contracting entity or contractor shall release the retainage less an amount equal to two hundred percent (200%) of the contracting entity's reasonably estimated cost of the balance of any contractor's or subcontractor's contractually obligated, yet uncompleted, work remaining. The contracting entity's agent shall determine the reasonably estimated cost due under this subsection. The contracting entity, contractor, and any subcontractor with work yet to be completed shall mutually agree with the schedule for completion of the work necessary for release of final payment. Within fifteen (15) business days after the retainage has been released by the contracting entity to the contractor, the contractor shall release to the subcontractors their proportional shares of the retainage. For purposes of this subsection, "substantial completion" is the point at which, as certified in writing by the contracting entity, a project is at the level of completion, in strict compliance with the contract, where:
  - (a) Necessary approval by public regulatory authorities has been given;
  - (b) The owner has received all required warranties and documentation; and
  - (c) The owner may enjoy beneficial use or occupancy and may use, operate, and maintain the project in all respects, for its intended purpose.

Partial use or occupancy shall not necessarily result in the project being deemed substantially complete and shall not be evidence of substantial completion.

- (3) If a contracting entity, contractor, or subcontractor fails to pay retainage, if any, pursuant to the terms of a contract or as required in this section, the contracting entity, contractor, or subcontractor shall pay interest to the contractor or subcontractor to whom payment was due, beginning on the first business day after the payment was due, at the rate of twelve percent (12%) per annum.

**Effective:** June 26, 2007

**History:** Created 2007 Ky. Acts ch. 136, sec. 3, effective June 26, 2007.